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Case No. 02-1019

In The Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

v.

RODNEY JOSEPH GANT,

Respondent.

ON WRIT OF CERTIORARI TO THE ARIZONA COURT OF APPEALS, DIVISION TWO

BRIEF FOR THE STATES OF FLORIDA, ALABAMA, CALIFORNIA, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, INDIANA, IOWA, OKLAHOMA, RHODE ISLAND, SOUTH CAROLINA, TEXAS, UTAH, AND VERMONT AS AMICI CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

The question presented in Arizona's petition for writ of certiorari was as follows:

> When police arrest the recent occupant of a vehicle outside the vehicle, are they precluded from searching the vehicle pursuant to *New York v. Belton* unless the arrestee was actually or constructively aware of the police before getting out of the vehicle?

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INTEREST OF THE AMICI CURIAE

This case presents the question of whether the ability to conduct a search incident to an arrest of a recent occupant of a motor vehicle conducted pursuant to *New York v. Belton* may be conditioned upon a law enforcement officer "initiating contact" with the arrestee. The Court's resolution of this question will affect the practices of law enforcement officers nationally and, in particular, those states and federal jurisdictions whose courts have held that *Belton* may be so conditioned and limited. Disposition of this case on its merits will affect the admissibility in state and federal prosecutions of evidence obtained by law enforcement officers as the result of the

frequently occurring search incident to the arrest of a recent occupant of a motor vehicle. Also, resolution of this issue will help avoid inconsistent application of the *Belton* rule in the lower courts as well as give guidance to the police officer in the field.

STATEMENT OF THE CASE

The material and operative facts, as stipulated by the parties and set forth by the trial judge, were reproduced by the Arizona Court of Appeals as follows:

> At the hearing on Gant's motion to suppress, the court stated:
>
> > Are any of the facts in issue? It seemed to me that from your respective briefs, that there didn't seem to be any disagreement. As I understand the facts-and let me repeat what I understand they are: That this arose out of a report of possible narcotic activity; . . . police went to the residence, knocked on the door. The defendant answered. . . .
> >
> > . . . .
> >
> > . . . [The police] ran a computer check on Rodney Joseph Gant and found that he was wanted on a suspended driver's license and, also, an outstanding warrant for failure to appear.
> >
> > . . . .
> >
> > . . . [The police] left and then came back to the residence, found a man and a woman around the residence. The woman had a crack pipe. The man, they didn't apparently find any contraband on him. Then the defendant arrived, driving a vehicle, and the officer, as

> the car pulled into he driveway, shined his flashlight into he car, recognized Mr. Gant as the individual he had previously met at the door and identified him as Mr. Gant.
>
> And as the officer was walking toward the vehicle, Mr. Grant got out of the vehicle and started walking toward the officer when the officer called him by name, and he responded that that was who he was. And the officer took him in custody for the outstanding warrant and suspended driver's license, having seen him operating a motor vehicle. . . . [T]here's no question that [the officer] could legally arrest and did lawfully arrest the defendant on the outstanding warrant and for operating a motor vehicle without a driver's license.
>
> Mr. Gant was removed from he vehicle--from the vicinity of the vehicle to the officer's patrol car and placed in the back of the patrol car, and the officers then did a search of the defendant's vehicle, found a weapon and found the jacket. And, apparently, feeling the jacket, felt something that they felt might be drugs and took it out of the pocket and found cocaine. (Pet. App. A2-A3)

Based upon these facts, the Arizona Court of Appeals aligned itself with those courts which require that the police initiate contact with the arrestee as a condition precedent to the valid conduct of a search incident to the arrest of a recent occupant of a motor vehicle. *State v. Gant*, 202 Ariz. 240, 43 P.3d 188 (App. 2002) (Pet. App. A6).

SUMMARY OF ARGUMENT

The determination by the Arizona Court of Appeals that the Fourth Amendment forbids a search incident to a valid custodial arrest of a recent occupant, absent the condition that the law enforcement officer initiates contact with the arrestee, is erroneous. Such a conclusion conflicts with decisions of the Court and erects an inflexible barrier to effective law enforcement. The decision ignores that the arrest itself provides the justification for a search of the arrestee's vehicle.

In so deciding, the Arizona Court of Appeals added a condition or requirement to *Belton* which is neither contemplated nor compelled by that decision or any comparable fact scenario. The Arizona Court of Appeals rejected precedent which embraces the bright-line rule in *Belton* and instead adopted a diametrically opposite requirement of a case-by-case examination of the facts presented. This latter approach is a hindrance to effective and practical law enforcement because it requires, depending on the factual scenario, a police officer to divine the subjective intent of the arrestee. Under this approach a search could only be conducted of an arrestee who voluntarily exited his vehicle prior to initiation of contact by the officer if that arrestee perceived the police presence. This will likely result in inconsistent application of the law in the lower courts.

ARGUMENT

THE FOURTH AMENDMENT DOES NOT REQUIRE THAT A LAW ENFORCEMENT OFFICER INITIATE CONTACT WITH AN ARRESTEE BEFORE A VALID WARRANTLESS SEARCH OF THE ARRESTEE'S VEHICLE INCIDENT TO THE ARREST MAY BE CONDUCTED.

In *New York v. Belton*, 453 U.S. 454, 460 (1981), the Court created the bright-line rule that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of the arrest, search the passenger compartment of that automobile." *Sub judice*, the Arizona Court of Appeals determined that the *Belton* bright-line

rule does not extend to a situation where the first contact the defendant has with the officer occurs after the defendant has exited the vehicle of his own accord. It is submitted that the correct and more logical view is: If a valid custodial arrest of an occupant or recent occupant of a motor vehicle has been effected, a contemporaneous search of that vehicle incident to that arrest may be undertaken. Any requirement that the officer initiate contact with the arrestee is compelled neither by *Belton* nor by other persuasive authority nor logic.

In *Belton*, the Court opined that there be straightforward rules to guide police officers in the exercise of their duties: "'[a] single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.'" *Id.* at 458 (quoting *Dunaway v. New York*, 442 U.S. 200, 213-14 (1979)). Indeed, the *Belton* bright-line rule exists in order to apprise law enforcement of those factors within which they apply and permit consistent application of the rule to circumstances they encounter. Whether a valid search of a recent occupant's vehicle incident to arrest is to be conditioned on the police officer initiating contact with the arrestee serves only to blur, if not totally erode, the *Belton* principle. It is constitutionally unnecessary to differentiate between an arrest of a recent occupant who may have exited his vehicle of his own volition and a recent occupant who was initially confronted by a police officer. The same justification for the search exists, namely the concern for officer safety and the need to preserve evidence, regardless of whether the police officer initiates contact with the arrestee. This justification is presumed whenever there is an arrest and there is no need to inquire whether an officer has concern that the arrestee may be armed or whether the arrestee is concealing evidence. *United States v. Robinson*, 414 U.S. 218, 235-36 (1973). It is the arrest itself, and not who initiated contact with whom, which is the significant constitutional basis to permit a warrantless search. Thus, it is not surprising that in *Michigan v. Long*, 463 U.S. 1032, 1049 n.14 (1983), the Court noted that an arrest is a significant event which, in and of itself, justifies an "automatic" search incident to that arrest. The Court stated that a *Belton* search would have been proper had the defendant, who had already exited his vehicle before the officers met him, been arrested. *Id.* at 1035 n.1.

A. A Contemporaneous Search of a Vehicle Incident to the Arrest of a Recent Occupant of That Vehicle is Constitutionally Reasonable Irrespective of Whether the Police Initiated Contact With the Arrestee.

In the context of a search incident to arrest, the key question ultimately is one of reasonableness. This Court has expressed a concern and recognized that investigative detentions involving suspects in vehicles are especially fraught with danger to the police officers. In *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), the Court held that police may order persons out of an automobile during a traffic stop and may frisk those persons if there is a reasonable belief that they are armed and dangerous. In *Maryland v. Wilson*, 519 U.S. 408 (1997), this Court extended the *Mimms* rule to passengers as well as drivers. In these traffic stop scenarios, the liberty interests of the persons detained are significantly greater than those of a person who has actually been placed under custodial arrest. Therefore, in the context of a search incident to arrest, it is reasonable for the police to conduct a search of a vehicle for purposes of officer safety. Likewise, concern for the safety of police officers in the context of protective sweeps made in conjunction with an in-home arrest has been addressed and upheld. *Maryland v. Buie*, 494 U.S. 325 (1990). If it is reasonable for the police to be able to protect themselves in homes, it is certainly reasonable for the police to be able to protect themselves on the street when they place an individual under arrest. This is true regardless of whether they initiate contact with the arrestee or not. *Belton* applies in a situation where the defendant has been handcuffed and placed in a squad car. *See, e.g., United States v. Karlin*, 852 F. 2d 968 (7th Cir. 1988). Certainly, concern for officer safety does not dissipate upon removal of the arrestee from the immediate vicinity of his vehicle where, for example, confederates are present at the scene. Officer safety concerns exist in a custodial arrest situation regardless of whether a police officer initiated contact.

Recognition of the volatility of the arrest scenario likely explains the nearly universal acceptance of the validity of a *Belton* search where the arrestee has already been removed from the immediate vicinity. Indeed, *Belton* searches can, and by practical necessity invariably do, take place after the suspect is outside of the car. Further, the facts of *Belton* demonstrate

that an individual need not be inside the vehicle at the time of the arrest for *Belton* to authorize a search of the car incident to the arrest. These recognitions serve to dispel reliance upon the *Chimel*[1] line of cases which require confinement of a search of a vehicle incident to arrest to the area within the arrestee's ability to lunge and grab. Because it is a given that *Belton* applies once the arrestee is out of the vehicle (and, indeed, where the arrestee is most often restrained), the question remains as to why it should make any difference whether the police initiate contact with the arrestee while he is still in his vehicle. The answer of course is that it does not make a difference because it is the act of arrest, and not where the arrestee is situated, which justifies the search.

Further, the Arizona Court of Appeals determined that *Belton* should not apply in this case for the reason that Gant got out of the car before the police officer could meet him.[2] Once Gant was placed under custodial arrest outside of the vehicle, as was Roger Belton, the same concerns justifying the Belton search exist – the threat to officer safety and destructible evidence. Hence, the applicability of *Belton* should not be dependent on the reason Gant exited his vehicle or whether first contact was initiated by the police. When Gant arrived at a residence where police were investigating drug-related activity, the warrant for his arrest already existed. Yet, because the officer was unable to confront Gant before he exited the vehicle, it is contended by respondent that a search of the vehicle incident to a valid arrest is impermissible. The considerations supporting *Belton*'s bright-line rule are squarely implicated when the police suddenly discover they are dealing with a person for whom an arrest warrant is outstanding; the

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[1] *Chimel v. California*, 395 U.S. 752 (1969), held that a lawful custodial arrest creates a situation which justifies the contemporaneous search without a warrant of the person arrested and of the immediately surrounding area within which he may reach.

[2] This determination highlights the validity of the Supreme Court of North Dakota's concern that "police officers should not have to race from their vehicles to the arrestee's vehicle to prevent the arrestee from getting out of the vehicle in order to conduct a valid search." *State v. Wanzek*, 598 N.W.2d 811, 815 (N.D. 1999), *infra* at pp. 14-15.

dangerous and volatile situation arising when one is arrested exists whether or not the arrestee voluntarily exits a vehicle before initiation of contact with the police.

Belton's bright-line rule is not without limits. Indeed, certain factual situations will present temporal and spatial expansion that will render a search unreasonable, but whether the police officer initiated contact is not one of the factors to consider in the reasonableness calculus.[3]

B. The *Belton* Bright-Line Rule is a More Sensible, Logical, and Practical Approach than is the "Who Initiated Contact" Test.

Those federal courts which have adopted the *Belton* bright-line rule rather than the "who initiated contact" rule reflect the more reasonable and workable approach. For example, the Fourth Circuit has recently weighed-in on this issue and has explicitly rejected the limiting of *Belton*'s bright-line rule to cases in which the law enforcement officer initiates contact with the arrestee. In *United States v. Thornton*, 325 F.3d 189, 195 (4th Cir. 2003), the court, in a well-reasoned opinion, observed that:

> ... [T]he historical rationales for the search incident to arrest doctrine – "the need to disarm the suspect in

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[3] When examining the temporal and spatial matters which may arise, the ultimate question is one of reasonableness. In order to invoke the *Belton* bright-line rule, it is submitted that the temporal issues could be resolved by resort to the following test: Whether the officer knows or had reason to know the arrestee recently exited the vehicle. Most often the officer "knows" that the arrestee recently exited the vehicle because the officer actually witnesses the event. An officer would have reason to know that the arrestee recently exited the vehicle if, for example, the vehicle is running and the arrestee is leaning on the car. The spatial issues could be resolved by resort to the following: The arrestee must be spatially proximate to the vehicle at the time of contact with the police or when the arrest is effected. This distance could be viewed as the distance from which the arrestee could reach the vehicle should he struggle and get away from the police. Factual scenarios which satisfy these precepts should deem a *Belton* search reasonable.

order to take him into custody" and "the need to preserve evidence for later use at trial" – do not permit the limitation on the Belton rule that the Sixth Circuit has adopted[4].... (citation omitted). "Danger to an officer" from an arrest and the "need to discover and preserve evidence" continue to be concerns regardless of whether the arrestee exits the vehicle voluntarily or because of confrontation with an officer. (citations omitted)

... [The] proposed limitation of the *Belton* rule would raise serious safety concerns for law enforcement personnel. A rule that requires officers to actually confront or signal confrontation with an arrestee while the arrestee is in the automobile, in order to justify a search of the automobile incident to arrest, could very well endanger an officer. For instance, we can certainly imagine the hesitancy of an officer to activate his lights and sirens if the officer encounters the arrestee while conducting undercover surveillance in an area. Moreover, when encountering a dangerous suspect, it may often be safer for officers to wait until the suspect has exited a vehicle before signaling their presence, thereby depriving the suspect of any weapons he may have in his vehicle, the protective cover of the vehicle, and the possibility of using the vehicle itself as either a weapon of a means of flight. Mandating that officers alert a suspect to their presence before he sheds the protective confines of his vehicle would force officers to choose between forfeiting the opportunity to preserve evidence for later use at trial and increasing the risk to their own lives and the lives of others. We decline to require officers to make this choice....

In *United States v. Snook,* 88 F.3d 605 (8th Cir. 1996), a police officer received information from the dispatcher that a warrant was outstanding for Snook's arrest and that Snook could be found at a particular location. Upon arriving at that location the officer saw Snook who was just stepping out of his

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[4] *See United States v. Hudgins*, 52 F.3d 115 (6th Cir. 1995), *infra at n.6.*

vehicle. The court upheld a search of the vehicle incident to the arrest pursuant to *Belton*. "The fact that Snook had just stepped out of his vehicle as the officer arrived and before his arrest does not alter his status as an 'occupant' of the vehicle." *Snook*, 88 F.3d at 608. In *Snook* and in this case, it was argued that *Belton* did not apply since the defendant had just stepped out of the car and was not an occupant at the time of his arrest. *Snook*, 88 F.3d at 607. The Eighth Circuit explicitly rejected this argument and determined that although Snook stepped out of his vehicle of his own accord, he was an "occupant" for purposes of *Belton*.[5] *See also United States v. Riedesel*, 987 F.2d 1383 (8th Cir. 1993) (despite the defense claim that he was not an occupant at the time of arrest, a *Belton* search was permitted where the defendant was arrested while outside of his vehicle).

In *United States v. Franco*, 981 F.2d 470 (10th Cir. 1992), the court upheld the search incident to an arrest of a defendant who was in a government truck, and not his own vehicle which was in close proximity, at the time of arrest. "Such a search is permissible notwithstanding the fact that the arrestee is out of the automobile and under the control of the officer. Franco was a recent occupant of his vehicle and the arrest was made in close proximity to his vehicle." *Franco*, 981 F.2d at 473 (citation omitted). In reviewing the policy considerations behind *Belton*, the court relied upon its prior decision in *United States v. Cotton*, 751 F.2d 1146 (10th Cir. 1985), and reiterated that the law does not require the arresting officer to sift through all conceivable possibilities that a weapon or evidence may be within reach of an arrestee before a search may be undertaken.

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[5] Under the factual scenario presented, perhaps it would have been more proper for the court to use the term "recent occupant" rather than "occupant." This Court in *Belton* included the term "recent occupant" in its analysis: "While the *Chimel* case established that a search incident to an arrest may not stray beyond the area within the immediate control of the arrestee, courts have found no workable definition of 'the area within the immediate control of the arrestee' when that area arguably includes the interior of an automobile and the arrestee is its **recent occupant**." 453 U.S. at 460.

In *United States v. Arango*, 879 F.2d 1501 (7th Cir. 1989), the defendant was approximately one block from the scene of the crime at the time of his arrest. The court found the search was consistent with *Belton* in order to protect persons and evidence. The court relied on *United States v. Cotton*, *supra* at 1148, quoted in *United States v. Karlin*, 852 F.2d 968, 970 (7th Cir. 1988), and held the law:

> does not require the arresting officer to undergo a detailed analysis, at the time of arrest, of whether the arrestee, handcuffed or not, could reach into the car to seize some item within, either as a weapon or to destroy evidence, or for some altogether different reason. The facts surrounding each arrest are unique, and it is not by any means inconceivable under those various possibilities that an arrestee could gain control of some item within the automobile. The law simply does not require the arresting officer to mentally sift through all these possibilities during an arrest, before deciding whether he may lawfully search within the vehicle.

Arango, 879 F.2d at 1506-07. The decision in *Arango* reaffirmed that *Chimel* and *Belton* "recognize the need to prevent an arrestee or a confederate from destroying evidence located in the area." *Arango*, 879 F.2d at 1505. *See also United States v. Sholola*, 124 F.3d 803 (7th Cir. 1997) (officer asked defendant if he had a car and where it was parked; at time of arrest the defendant was standing near the open driver's side door and could have secured a weapon). Other federal circuits have also sanctioned a *Belton* search where the initial contact between police officer and arrestee occurred only after the defendant had exited the vehicle of his own accord. *See United States v. Bautista*, 731 F.2d 97 (1st Cir. 1984) (upholding a *Belton* search where agents arrested a codefendant who was standing beside an open door of a car); *United States v. Schecter*, 717 F.2d 864 (3rd Cir. 1983) (upholding a *Belton* search where troopers arrived at scene shortly after accident and found defendant "stumbling about" the auto).

A great many state courts have similarly concluded that the reasoning of *Belton* exhibits a more practical policy consideration and promotes an interpretation of the rule which

can be easily applied by the officer in the field: A valid custodial arrest of a recent occupant of a motor vehicle is the only condition required to be met in order to conduct a contemporaneous search of the vehicle incident to that arrest. In *State v. Wanzek*, 598 N.W.2d 811 (N.D. 1999), for example, the court observed:

> We are not persuaded by the line of cases which hold an arrestee is an occupant only when arrested inside the vehicle or where the police initiate contact with the arrestee before the arrestee exits the vehicle. In our view, these decisions undermine the purposes behind the "bright-line" rule established in Belton. The purposes behind Belton were two-fold: to create a single familiar standard to guide police officers in automobile searches and to eliminate the need for litigation in every case to determine whether the passenger compartment of the vehicle is within the scope of a search incident to arrest. (citations omitted) Furthermore, these decisions raise grave public policy issues because they create serious concerns for the safety of officers and others. By drawing a distinction between an occupant and a recent occupant of a vehicle, we would encourage individuals to avoid lawful searches of their vehicles by rapidly exiting or moving away from the vehicle as officers approached. (citation omitted) Police officers should not have to race from their vehicles to the arrestee's vehicle to prevent the arrestee from getting out of the vehicle in order to conduct a valid search. (citation omitted) If Belton is read to preclude searches where police contact occurs after the suspect exits the vehicle, suspects could conceal evidence and weapons by merely stepping outside the vehicle whenever they saw an officer approaching. (citations omitted)

598 N.W.2d at 815. The *Wanzek* court held that a valid *Belton* search was conducted where the defendant stepped out of her car immediately prior to arrest and was standing at the rear of the automobile at the time of arrest.

In *Glasco v. Commonwealth*, 513 S.E.2d 137 (Va. 1999), the Supreme Court of Virginia determined that a defendant,

who parked, voluntarily left his vehicle and then walked across the street where the police officer initiated contact, was a recent occupant of a vehicle which could be searched incident to the valid arrest of the defendant. In so holding the court stated:

> [W]e are not persuaded by the authorities that have decided that an arrestee is an occupant or recent occupant of an automobile only if the police officer initiates contact with the arrestee before that person exits the vehicle. That kind of limitation assumes that an individual, who voluntarily gets out of an automobile, is not aware of the presence of a police officer, or having such knowledge, it did not prompt the person to exit the vehicle. We do not believe that those assumptions are always warranted. Moreover, a knowledgeable suspect has the same motive and opportunity to destroy evidence or obtain a weapon as the arrestee with whom a police officer has initiated contact. That suspect could also conceal evidence in the vehicle and effectively prevent an officer from discovering it by getting out of his or her automobile.

513 S.E.2d at 141-42. Relying upon *Glasco*, the court in *Cason v. Commonwealth*, 530 S.E.2d 920, 924 (Va. Ct. App. 2000), held that the only prerequisites to a lawful search incident to an arrest are that the search is contemporaneous with the arrest and the arrestee is a recent occupant of the vehicle. Although the officer did not see the arrestee on a moped, the officer saw the arrestee, who was carrying a motorcycle helmet, approach from a location in a nearby yard where he later reported the moped was parked. Because the arrestee was a recent occupant of the moped, the moped was validly searched incident to the arrest.

In *People v. Savedra*, 907 P.2d 596 (Colo. 1995), the court upheld a *Belton* search where the arrestee and a passenger had exited the truck when the police drove into the parking lot where the truck was parked. The court determined that:

> The justification for both the Chimel and Belton rules is clarification of the rights and responsibilities of police officers when faced with an evolving confrontation resulting in arrest. The warrant exceptions created by Chimel and Belton are designed

> to permit police officers to protect themselves from harm, and to avoid the destruction of evidence. Given that reasoning, it is illogical to distinguish between someone who is ordered out of a vehicle by a police officer and someone who exits the vehicle anticipating or trying to avoid imminent police contact. In both situations suspects are equally capable of concealing evidence or weapons in the vehicle and may be equally motivated to do so.

907 P.2d at 601.

The court in *People v. Bosnak*, 633 N.E.2d 1322, 1325 (Ill. App. Ct. 1994), assumed the trial judge found that the defendant did not see the officer's emergency lights and that the officer did not make initial contact with the defendant until the defendant parked his car and walked ten (10) yards from it. The court held:

> Where, as in the present case, the officer pursues an automobile based upon his recent observation of the driver's actions, and arrests the driver who has just exited the vehicle and is still within its immediate vicinity, the officer may reasonably consider the driver to be a "recent occupant" within the contemplation of Belton, so that a search of the passenger compartment incident to the arrest will be authorized.

633 N.E.2d at 1326.

Likewise, in *People v. Stoffle*, 3 Cal. Rptr. 2d 257 (Ct. App. 1992), the court therein held that an automobile search incident to arrest is permitted even though the defendant is not actually sitting in the car when arrested. If a close association with the car is demonstrated at the moment of arrest, the arrestee is considered a "recent occupant." This can be shown where the arrestee has acknowledged he owns the car, where the arrestee has recently been physically in the car, or where the arrestee is close enough to the car to continue to have access to it.[6]

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[6] In contrast to the better reasoned decisions discussed above are the cases, including the decision of the Arizona Court of Appeals *sub judice*,

C. Use of the *Belton* Bright-Line Test Obviates the Need to Require Law Enforcement Officers and the Courts To Make Decisions Concerning the Subjective Intent of an Arrestee.

In *Washington v. Chrisman*, 455 U.S. 1, 7 (1982), this Court envisioned the potential dilemma and held:

> Every arrest must be presumed to present a risk of danger to the arresting officer. *Cf.*, *United States v. Robinson*, supra, at 234, n.5, 94 S.Ct. at 476, n.5. There is no way for an officer to predict reliably how a particular subject will react to arrest or the degree of the potential danger. Moreover, the possibility that an arrested person will attempt to escape if not properly supervised is obvious. Although the Supreme Court of Washington found little likelihood that [the defendant] could escape from his dormitory room, an arresting officer's custodial authority over an arrested person does not depend upon a reviewing court's after the fact assessment of the particular arrest situation. *Cf.*, *New York v. Belton*, 453 U.S. 454, 458-460, 101 S.Ct. 2860, 2863-2864, 69 L. Ed. 2d 768 (1981); *United States v. Robinson*, supra, 414 U.S. at 235, 94 S. Ct. at 476. (emphasis supplied).

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which unnecessarily rely upon the *Chimel* reasoning rather than the more expansive holding of *Belton*. Emblematic of these cases which have unreasonably limited *Belton* is *United States v. Hudgins*, 52 F.3d 115 (6th Cir. 1995)(holding that "where a defendant has voluntarily exited the automobile and begun walking away from the automobile before the officer has initiated contact with him, the cases does not fall within *Belton's* bright-line rule, and a case by case analysis of the reasonableness of the search under *Chimel* becomes necessary"). Cases with similar holdings include *United States v. Strahan*, 984 F.2d 155 (6th Cir. 1993); *United States v. Fafowora*, 865 F.2d 360 (D.C. Cir. 1989); *People v. Stehman*, 783 N.E.2d 1 (Ill. 2002); *Thomas v. State*, 761 So. 2d 1010 (Fla. 1999).

Mandating a court to determine the intent of the arrestee at the time contact is initiated severely limits the holding of *Belton* and, indeed, is contraindicated by the precedent of this Court. Moreover, requiring a police officer to make a subjective decision on the spot as to whether the arrestee exited his vehicle upon perceiving the police presence results in an impracticable test and not the clear cut guidance fostered by *Belton*. The arrest of a recent occupant of a motor vehicle, without more, justifies a search incident to arrest under *Belton*. It is constitutionally immaterial whether the officer initiates contact with the arrestee. To hold otherwise would continue the inconsistent application of the law in the lower courts due to the need for a case-by-case search for the subjective intent of an arrestee.

CONCLUSION

The decision of the Arizona Court of Appeals should be reversed.

Respectfully submitted,

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